

**Assembly Bill No. 2259**

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Passed the Assembly August 28, 2012

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*Chief Clerk of the Assembly*

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Passed the Senate August 23, 2012

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2012, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to amend Sections 53395.8, 53395.81, and 53397.71 of the Government Code, relating to infrastructure financing.

## LEGISLATIVE COUNSEL'S DIGEST

AB 2259, Ammiano. Infrastructure financing districts: America's Cup and waterfront district venues.

Existing law authorizes the City and County of San Francisco to create infrastructure financing districts, including districts that include specified waterfront property, adopt infrastructure financing plans for those districts, and issue bonds financed by projected increases in ad valorem property taxes to fund certain public facilities, pursuant to a specified procedure.

With respect to the infrastructure financing district provisions that apply to the City and County of San Francisco and waterfront districts, this bill would modify the definition of key terms and authorize a waterfront district to finance improvements to protect against potential sea level rise. The bill would modify provisions relating to the ordinance establishing the base year for the district and would specify the base year of land annexed into a district. In the event the district requests an affected tax entity to subordinate the amount to be paid to the entity, the bill would authorize the affected taxing entity to disapprove a request for subordination only if there will be insufficient tax increment funds.

Existing law authorizes the adoption of infrastructure financing plans for special waterfront districts that include the waterfront area in the City and County of San Francisco designated as the America's Cup venues, and the use of specified tax revenues produced in the districts for the construction of the Port of San Francisco's maritime facilities at Pier 27, improvement of publicly held waterfront lands used as viewing sites, and other matters, subject to specified allocation procedures.

Existing law requires that, with respect to the special waterfront district Education Revenue Augmentation Fund (ERAF) share produced in a Port America's Cup district with a special waterfront district enhanced financing, 20% of that amount be set aside to

finance costs of specified improvements to federally or state-owned waterfront lands approved by trustee agencies.

The bill would provide that the ERAF share of set-aside funds be used to finance costs of planning, design, and acquisition and construction of improvements to publicly owned waterfront lands owned by federal, state, or San Francisco local department trustee agencies. The bill would impose new requirements and grant certain exceptions in the event any portion of the set-aside funds is allocated to a federal or state trustee agency.

Existing law authorizes the legislative body of a waterfront district to, by resolution, authorize the issuance of bonds without holding an election of the voters residing in the waterfront district.

The bill would additionally authorize the legislative body of a waterfront district to undertake proceedings and actions relating to infrastructure financing districts with respect to the district as a whole or separately with respect to one or more project areas. The bill would authorize the legislative body to increase the principal amount of bonds that may be issued for a district or project area within a district.

This bill would make legislative findings and declarations as to the necessity of a special statute for the City and County of San Francisco.

The bill would make legislative findings and declarations to ratify any action taken by San Francisco consistent with the special statute prior to its effective date.

*The people of the State of California do enact as follows:*

SECTION 1. Section 53395.8 of the Government Code is amended to read:

53395.8. (a) This section applies only to the City and County of San Francisco, and to any waterfront district.

(b) In addition to the findings and declarations in Section 53395, the Legislature further finds and declares that providing the ability to capture property tax increment revenues to finance needed public facilities in waterfront lands in San Francisco that are subject to the public trust to the public agencies with the responsibility to administer those areas will further the objectives of the public trust and enjoyment of those trust lands by the people of the state.

(c) For purposes of this section, the following terms have the following meanings except as otherwise provided:

(1) “Affected taxing entity” means any governmental taxing agency, except San Francisco and its local educational agencies, that levied or had levied on its behalf a property tax on all or a portion of the land located in the proposed district in the fiscal year prior to the designation of the district, all or a portion of which the district proposes to collect in the future under its infrastructure financing plan, except as provided in subdivision (h).

(2) “Base year” means the fiscal year in which the assessed value of taxable property in the district was last equalized prior to the effective date of the ordinance adopted to create the district, or a subsequent fiscal year specified in the infrastructure financing plan for the district.

(3) “Board” means the Board of Supervisors of the City and County of San Francisco, which shall be the legislative body for any district formed under this section.

(4) “Debt” means loans, advances, or other forms of indebtedness and financial obligations, including, but not limited to, commercial paper, variable rate demand notes, all moneys payable in relation to the debt, and all debt service coverage requirements in any debt instrument, in addition to the obligations specified in the definition of “debt” in Section 53395.1.

(5) “District” means any district created under this chapter, including any project area within a district.

(6) “ERAF” means the Educational Revenue Augmentation Fund.

(7) “ERAF-secured debt” means debt incurred to finance a Pier 70 district subject to a Pier 70 enhanced financing plan that is secured by and will be repaid from the ERAF share.

(8) “ERAF share” means the county ERAF portion of incremental tax revenue committed to a Pier 70 district under a Pier 70 enhanced financing plan.

(9) “Local educational agencies” means, collectively, the San Francisco Unified School District, the San Francisco Community College District, and the San Francisco County Office of Education.

(10) “Mirant site” means the San Francisco waterfront land owned by Mirant Corporation, on which it or its affiliate formerly operated a coal gasification powerplant.

(11) “Pier 70 district” means a waterfront district that includes 65 acres of waterfront land in the area near Pier 70.

(12) “Pier 70 enhanced financing plan” means an infrastructure district financing plan for a Pier 70 district that contains a provision authorized under subparagraph (D) of paragraph (3) of subdivision (g).

(13) “Port” means the Port of San Francisco.

(14) “Project area” means a defined area designated for development within a waterfront district formed under this chapter in accordance with subdivision (g).

(15) “Public facilities” means facilities and, where the context requires, related services, authorized to be financed in whole or in part by a district formed under this chapter in accordance with subdivision (g). Public facilities may be publicly owned or privately owned utility infrastructure if they are available to or serve the general public. “Public facilities” includes any capital facility fees used to pay for public facilities.

(16) “San Francisco” means the City and County of San Francisco. For purposes of applying this chapter, San Francisco is a city.

(17) “Waterfront district” means a district formed under this chapter on land under port jurisdiction along the San Francisco waterfront and any special waterfront district as defined in Section 53395.81.

(18) “Waterfront set-aside” means the restricted funds required to be set aside under clause (ii) of subparagraph (C) of paragraph (3) of subdivision (g).

(19) “County tax collector” means the county auditor-controller, tax collector, or other officer responsible for the payment of property taxes into the funds of taxing entities.

(d) In addition to the facilities and services authorized by Section 53395.3, a waterfront district may finance any of the following:

(1) Remediation of hazardous materials in, on, under, or around any real or tangible property.

(2) Seismic and life-safety improvements to existing buildings.

(3) Rehabilitation, restoration, and preservation of structures, buildings, or other facilities having special historical, architectural, or aesthetic interest or value and that are listed on the National Register of Historic Places, are eligible for listing on the National Register of Historic Places individually or because of their location

within an eligible registered historic district, or are listed on a state or local register of historic landmarks.

(4) Structural repairs and improvements to piers, seawalls, and wharves, and installation of piles.

(5) Removal of bay fill.

(6) Stormwater management facilities, other utility infrastructure, or public open-space improvements.

(7) Shoreline restoration.

(8) Other repairs and improvements to maritime facilities.

(9) Planning and design work that is directly related to any public facilities authorized to be financed by a waterfront district.

(10) Reimbursement payments made to the California Infrastructure and Economic Development Bank in accordance with paragraph (5) of subdivision (e) of Section 53395.81.

(11) Improvements, which may be publicly owned, to protect against potential sea level rise.

(e) A waterfront district may include, and finance public facilities on, tidelands and submerged lands, including filled or unfilled lands, subject to the public trust for commerce, navigation, and fisheries, and the applicable statutory trust grant or grants. Public facilities located on tidelands and submerged lands shall serve and promote uses and purposes consistent with the public trust and applicable statutory trust grants. Public facilities that increase access to, or the use or enjoyment of, public trust lands will be deemed to be facilities of communitywide significance that provide significant benefits to an area larger than the area of the district.

(f) Public facilities financed by a waterfront district shall be public trust assets subject to the administration and control of the district, except for the following:

(1) Utility infrastructure and public transportation facilities, except maritime transportation facilities that are administered and controlled by another entity under an agreement with the port.

(2) Public facilities on land located in a previously formed waterfront district that the port subsequently leases, sells, or otherwise transfers to any person free of the public trust, the Burton Act trust, and any additional restrictions on use or alienability created by the Burton Act transfer agreement, provided that the State Lands Commission has concurred in the lifting of trust

restrictions on the transferred land and that the transferred land will remain in and subject to the district.

(g) For a waterfront district, the requirements of this subdivision supplant and replace the provisions of Sections 53395.10 to 53395.25, inclusive. The board may adopt or amend one or more infrastructure financing plans for districts along the San Francisco waterfront according to the procedures in this section. Except as provided otherwise in this subdivision or in Section 53395.81, the provisions of subdivisions (a) and (b) of Section 53395.4 shall not apply to a waterfront district. A waterfront district may be formed and become effective at any time. A district may be divided into project areas, each of which may be subject to distinct limitations established under this subdivision. Within a district, one or more project areas may be a special waterfront district as defined in Section 53395.81.

(1) The board shall initiate proceedings for the establishment of a district by adopting a resolution of intention to establish the proposed district that does all of the following:

(A) States an infrastructure financing district is proposed to be established and describes the boundaries of the proposed district. The boundaries may be described by reference to a map on file in the office of the clerk of the board.

(B) States the type of public facilities proposed to be financed by the district.

(C) States that incremental property tax revenue from San Francisco and some or all affected taxing entities within the district, but none of the local educational agencies, except as provided in subdivision (h) or as a result of the allocation of the ERAF share, may be used to finance these public facilities.

(D) Directs the executive director of the port, or an appropriate official designated by the executive director, to prepare a proposed infrastructure financing plan.

(2) The board shall direct the city clerk to mail a copy of the resolution of intention to any affected taxing entities.

(3) The proposed infrastructure financing plan shall be consistent with the general plan of San Francisco, as amended from time to time, and shall include all of the following:

(A) A map and legal description of the proposed district, which may include all or a portion of the district designated by the board in its resolution of intention.

(B) A description of the public facilities required to serve the development proposed in the district, including those to be provided by the private sector, those to be provided by governmental entities without assistance under this chapter, those public facilities to be financed with assistance from the proposed district, and those to be provided jointly. The description shall include the proposed location, timing, and projected costs of the public facilities. The description may consist of a reference to the capital plan for the territory in the district that is approved by the board, as amended from time to time.

(C) A financing section that shall contain all of the following:

(i) A provision that specifies the maximum portion of the incremental tax revenue of San Francisco and of any affected taxing entity proposed to be committed to the district, and affirms that the plan will not allocate any portion of the incremental tax revenue of the local educational agencies to the district.

(ii) Limitations on the use of levied taxes allocated to and collected by the district that provide that, except as provided by this section or Section 53395.81, incremental tax revenues allocated to a district must be used within the district for purposes authorized under this section, and that not less than 20 percent of the amount allocated to a district shall be set aside to be expended solely on shoreline restoration, removal of bay fill, or waterfront public access to or environmental remediation of the San Francisco waterfront.

(iii) A projection of the amount of incremental tax revenues expected to be received by the district, assuming a district receives incremental tax revenues for a period no later than 45 years after San Francisco projects that the district will have received one hundred thousand dollars (\$100,000) in incremental tax revenues under this chapter.

(iv) Projected sources of financing for the public facilities to be assisted by the district, including debt to be repaid with incremental tax revenues, projected revenues from future leases, sales, or other transfers of any interest in land within the district, and any other legally available sources of funds. The projection may refer to the capital plan for the territory in the district that is approved by the board, as amended from time to time.

(v) A limitation on the aggregate number of dollars of levied taxes that may be divided and allocated to the district. Taxes shall



not be divided or be allocated to the district beyond this limitation, except by amendment of the infrastructure financing plan pursuant to the procedures in this subdivision. In the event San Francisco divides a district into project areas, the project areas may share this limit and the limit may be divided among the project areas or a separate limit may be established for a project area.

(vi) A date on which the effectiveness of the infrastructure financing plan and all tax allocations to the district will end and a date on which the district's authority to repay indebtedness with incremental tax revenues received under this chapter will end, not to exceed 45 years from the date the district has actually received one hundred thousand dollars (\$100,000) in incremental tax revenues under this chapter. After the time limits established under this subparagraph, a district shall not receive incremental tax revenues under this chapter.

(vii) An analysis of the costs to San Francisco for providing facilities and services to the district while the district is being developed and after the district is developed, and of the taxes, fees, charges, and other revenues expected to be received by San Francisco as a result of expected development in the district.

(viii) An analysis of the projected fiscal impact of the district and the associated development upon any affected taxing entity. If no affected taxing entities exist within the district because the plan does not provide for collection by the district of any portion of property tax revenues allocated to any taxing entity other than San Francisco, the district has no obligation to any other taxing entity under this subdivision.

(ix) A statement that the district will maintain accounting procedures in accordance, and otherwise comply, with Section 6306 of the Public Resources Code for the term of the plan.

(D) For a Pier 70 district only, the Pier 70 enhanced financing plan may contain a provision meeting the requirements of Section 53396 that allocates a portion of the incremental tax revenue of San Francisco and of other designated affected taxing entities to the Pier 70 district.

The portion of incremental tax revenue of San Francisco to be allocated to the Pier 70 district must be equal to the portion of the incremental tax revenue of the county ERAF proposed to be committed to the Pier 70 district. In addition to all other

requirements under this section, a Pier 70 district shall also be subject to the following additional limitations:

(i) A Pier 70 district subject to a Pier 70 enhanced financing plan shall not be formed and become effective prior to January 1, 2014.

(ii) Any Pier 70 enhanced financing plan shall contain all of the following:

(I) A time limit on the issuance of new ERAF-secured debt to finance the district, which may not exceed 20 fiscal years from the fiscal year in which any Pier 70 district subject to a Pier 70 enhanced financing plan first issues debt. The ERAF-secured debt may be repaid over the period of time ending on the time limit established under clause (vi) of subparagraph (C). This time limit on the issuance of new ERAF-secured debt shall not prevent a Pier 70 district from subsequently refinancing, refunding, or restructuring ERAF-secured debt if all of the following conditions are met: the time during which the debt is to be repaid is not extended beyond the time limit established under clause (vi) of subparagraph (C); in the case of a refinancing or refunding to achieve savings, the total interest cost to maturity on the new debt plus the principal amount of the new debt does not exceed the total interest cost to maturity on the debt to be refunded plus the principal of the debt to be refunded; and the principal amount of the new debt does not exceed the amount required to defease the debt to be refunded, refinanced, or restructured, to establish customary debt service reserves and to pay related costs of issuance. If these conditions are satisfied, the initial principal amount of the new debt may be greater than the outstanding principal amount of the debt to be refunded, refinanced, or restructured.

(II) A statement that the Pier 70 district shall be subject to a limitation on the number of dollars of the ERAF share that may be divided and allocated to the Pier 70 district pursuant to the Pier 70 enhanced financing plan, including any amendments to the plan, which shall be established in consultation with the county tax collector. This limitation and a schedule specifying the amount of the ERAF share that must be divided and allocated to the district in each succeeding fiscal year until all ERAF-secured debt has been paid shall be included in the statement of indebtedness that the Pier 70 district files for the 19th fiscal year after the fiscal year

in which any ERAF-secured debt is first issued. The ERAF share shall not be divided and shall not be allocated to the Pier 70 district beyond that limitation.

(III) The limitations established by subclauses (I) and (II) may be amended only by amendment of this section. When the ERAF-secured debt, if any, has been paid, all moneys thereafter allocated to the ERAF share shall be paid into ERAF as taxes on all other property are paid. In addition, beginning in the 21st fiscal year after the fiscal year in which ERAF-secured debt is first issued, any portion of the ERAF share in excess of the amount required to meet the Pier 70 district's ERAF-secured debt service obligations shall be paid into ERAF.

(4) The proposed infrastructure financing plan shall be mailed to each affected taxing entity for review, together with, to the extent available, any report required by the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) that pertains to the proposed public facilities and any proposed development project for which the public facilities are needed, and shall be made available for public inspection. The report also shall be sent to the San Francisco Planning Department and the board.

(5) Except as provided in subdivision (h) and except as a result of an ERAF share allocation, the board shall not enact a resolution proposing formation of a district and providing for the division of taxes of any affected taxing entities for use in the Pier 70 district as set forth in the proposed infrastructure financing plan unless a resolution approving the plan has been adopted by the governing body of each affected taxing entity that is proposed to be subject to division of taxes as set forth in the proposed infrastructure financing plan, and that resolution has been filed with the board at or prior to the time of the hearing. A resolution approving the plan adopted by the governing body of an affected taxing entity shall be deemed the affected taxing entity's agreement to participate in the plan for the purposes of Section 53395.19.

(6) If the governing body of an affected taxing entity has not approved the infrastructure financing plan before the board considers the plan, the board may amend the infrastructure financing plan to remove the allocation of the tax revenues of the nonconsenting affected taxing entity. If a plan is so amended, the plan also shall be amended to provide that San Francisco will

allocate to the Pier 70 district funds equal on a dollar-for-dollar basis to the tax revenues that the Pier 70 district would have received from the allocation of tax revenues of the affected taxing entity that is removed from the plan.

(7) The board shall hold a public hearing regarding the infrastructure financing plan that shall be scheduled on a date no earlier than 60 days after the plan has been sent to each affected taxing entity, or in the absence of any affected taxing entities, no earlier than 30 days after the plan has been lodged with the clerk of the board. Notice of the public hearing must be published not less than once a week for four successive weeks in a newspaper designated by the board for the publication of official notices in San Francisco, or if the board no longer designates a newspaper for the publication of official notices, a newspaper of general circulation serving primarily San Francisco residents. The notice shall state that the district will be established to finance public facilities, briefly describe the public facilities and the proposed financial arrangements, including the proposed commitment of incremental tax revenue, describe the boundaries of the proposed district, and state the day, hour, and place when and where any persons having any objections to the proposed infrastructure financing plan, or the regularity of any of the previous proceedings, may appear before the board and object to the adoption of the proposed infrastructure financing plan by the board.

(8) At the hour set in the required notices, the board shall proceed to hear and pass upon all written and oral objections. The hearing may be continued from time to time. The board shall consider any recommendations of affected taxing entities, and all evidence and testimony for and against the adoption of the infrastructure financing plan.

(9) No election will be required to form the district, and at the conclusion of the hearing, the board may adopt an ordinance adopting the infrastructure financing plan, as drafted or as modified by the board, or it may abandon the proceedings.

(10) Any public or private owner of land that is not within an existing district, but that has any boundary line contiguous to a boundary of the waterfront district, may petition the board for inclusion of the land in the waterfront district without an election. The annexation shall take effect on the effective date of the ordinance of the board's annexation approval. As a condition to

inclusion of its land in the waterfront district, the petitioning landowner shall acknowledge and agree that any portion of the land within 100 feet of the San Francisco Bay Conservation and Development Commission shoreline (shoreline band) will include contiguous public access along the length of the shoreline band, improved and maintained to standards equal to adjacent waterfront public access ways on public land, as certified by the San Francisco Bay Conservation and Development Commission. Nothing in this section is intended to affect or limit the authority of the San Francisco Bay Conservation and Development Commission pursuant to Chapter 1 (commencing with Section 66600) of Title 7.2, or any other law. This procedure will apply to any petition to include the Mirant site in the Pier 70 district, but the board may amend the Pier 70 financing plan to include the Mirant site in the Pier 70 district only after the Director of Finance's approval.

(11) The ordinance creating a district and adopting or amending an infrastructure financing plan shall establish the base year for the district. The base year of land annexed into a district shall be the fiscal year in which the assessed value of the annexed land was last equalized prior to the effective date of the annexation, or a subsequent fiscal year specified in the ordinance of the board approving the annexation. The board may amend an infrastructure financing plan by ordinance for any purpose, including, but not limited to, dividing an established district into one or more project areas, reducing the district area, or expanding a waterfront district to include the petitioning landowner's land in the district in accordance with the board's established procedures. Any ordinance adopting or amending an infrastructure financing plan will be deemed an ordinance adopted for the purposes of Section 53395.23.

(12) With respect to a waterfront district, San Francisco may enter into an agreement for the construction of discrete portions or phases of public facilities. The agreement may include any provisions that San Francisco determines are necessary or convenient, but shall do all of the following:

(A) Identify the specific public facilities or discrete portions or phases of public facilities to be constructed and purchased. San Francisco may agree to purchase discrete portions or phases of public facilities if the portions or phases are capable of serviceable use as determined by San Francisco.

(B) Notwithstanding subparagraph (A), when the purchase value of a public facility exceeds one million dollars (\$1,000,000), San Francisco may agree to purchase discrete portions or phases of the partially completed public facility.

(C) Identify procedures to ensure that the public facilities are constructed pursuant to plans, standards, specifications, and other requirements as determined by San Francisco.

(D) Specify a price or a method to determine a price for each public facility or discrete portion or phase of a public facility. The price may include an amount reflecting the interim cost of financing cash payments that must be made during construction of the project, at the discretion of San Francisco.

(E) Specify procedures for final inspection and approval of public facilities or discrete portions or phases of public facilities, for approval of payment and for acceptance and conveyance.

(h) (1) All the amounts calculated under this subdivision shall be calculated after deducting the waterfront set-aside required under clause (ii) of subparagraph (C) of paragraph (3) of subdivision (g) of this section or the set-aside required for a special waterfront district under paragraph (3) of subdivision (c) of Section 53395.81, as applicable, from the total amount of tax increment funds allocated to a district in the applicable fiscal year. The payments made by the county tax collector under this subdivision to the affected taxing entities shall be allocated among the affected taxing entities in proportion to the percentage share of property taxes each affected taxing entity receives during the fiscal year the funds are allocated. The percentage share shall be determined without regard to any amounts allocated to a city, county, or city and county under Sections 97.68 and 97.70 of the Revenue and Taxation Code.

(2) (A) Prior to incurring any debt, except loans or advances from San Francisco, a district may subordinate to the debt the amount required to be paid by the county tax collector to an affected taxing entity under this subdivision, if any, provided the affected taxing entity has approved these subordinations as provided in this paragraph.

(B) At the time the district requests an affected taxing entity to subordinate the amount to be paid by the county tax collector to it, the district shall provide the affected taxing entity with substantial evidence that sufficient tax increment funds will be

available to pay when due both the debt service on the debt and the payments by the county tax collector to the affected taxing entity required under this subdivision.

(C) Within 45 days after receipt of the district's request, the affected taxing entity shall approve or disapprove the request for subordination. An affected taxing entity may disapprove a request for subordination only if it finds, based upon substantial evidence, that the tax increment funds will be insufficient to pay when due the debt payments and the amount required to be paid by the county tax collector to the affected taxing entity. If the affected taxing entity does not act within 45 days after receipt of the district's request, the request to subordinate shall be deemed approved and its deemed approval shall be final and conclusive.

(D) For the purpose of this paragraph only, "affected taxing entity" shall mean any governmental agency that levied, or had levied on its behalf, a property tax on all or a portion of the land located in the proposed district in the fiscal year prior to the designation of the waterfront district.

(3) The Legislature finds and declares all of the following:

(A) The payments to be made under this subdivision are necessary in order to alleviate the financial burden and detriment that affected taxing entities may incur as a result of the adoption of an infrastructure financing plan, and payments made under this subdivision will benefit the district.

(B) The payments to be made under this subdivision are the exclusive payments that are required to be made by a district to affected taxing entities during the term of an infrastructure financing plan.

(4) Nothing in this section requires a district, either directly or indirectly, as a measure to mitigate a significant environmental effect or as part of any settlement agreement or judgment brought in any action to contest the validity of a district under Section 53395.6, to make any other payments to affected taxing entities, or to pay for public facilities that will be owned or leased to an affected taxing entity.

(i) The portion of taxes required to be allocated to the Pier 70 district under a duly adopted infrastructure financing plan shall be allocated and paid to the district by the county tax collector under the procedure contained in this subdivision. If the approved plan allocates to the Pier 70 district 100 percent of the incremental tax

revenue of San Francisco that is available under applicable law to be allocated to the Pier 70 district, then the district shall not make a payment to ERAF, but if the plan allocates less than 100 percent of the incremental tax revenue of San Francisco that is available under applicable law to be allocated to the Pier 70 district, then the district shall pay a proportionate share of incremental tax revenue into ERAF.

(1) No later than October 1 of each year, for each district for which the infrastructure financing plan provides for the division of taxes, the district shall file with the county tax collector a statement of indebtedness and a reconciliation statement for the previous fiscal year certified by the chief financial officer of the district.

(2) Each statement of indebtedness shall contain all of the following:

(A) For each debt the district has incurred or entered into, all of the following:

(i) The date the district incurred or entered into the debt.

(ii) The principal amount, term, purpose, interest rate, and total interest payable over the term of the debt.

(iii) The principal amount and interest due in the fiscal year in which the statement is filed.

(iv) The total amount of principal and interest remaining to be paid over the term of the debt.

(B) The sum of the principal and interest due on all debts in the fiscal year in which the statement is filed.

(C) The sum of principal and interest remaining to be paid on all debts.

(D) The available revenues as of the end of the previous fiscal year.

(3) The district may estimate the amount of principal or interest, the interest rate, or term of any debt if the nature of the debt is such that the amount of principal or interest, the interest rate, or term cannot be precisely determined. The district may list on a statement of indebtedness any debt incurred or entered into on or before the date the statement is filed.

(4) Each reconciliation statement shall include all of the following:

(A) A list of all debts listed on the previous year's statement of indebtedness, if any.



(B) A list of all debts not listed on the previous year's statement of indebtedness, but incurred or entered into in the previous year and paid in whole or in part from incremental tax revenue received by the district. This listing may aggregate into a single item debts incurred or entered into in the previous year for a particular purpose, such as relocation expenses, administrative expenses, consultant expenses, or remediation of hazardous materials.

(C) For each debt described in subparagraph (A) or (B), all of the following shall be included:

(i) The total amount of principal and interest remaining to be paid as of the later of the beginning of the previous year or the date the debt was incurred or entered into.

(ii) Any increases or additions to the debt occurring during the previous year.

(iii) The amount paid on the debt in the previous year from incremental tax revenue received by the district.

(iv) The amount paid on the debt in the previous year from revenue other than incremental tax revenue received by the district.

(v) The total amount of principal and interest remaining to be paid as of the end of the previous fiscal year.

(D) The available revenues of the district as of the beginning of the previous fiscal year.

(E) The amount of incremental tax revenue received by the district in the previous fiscal year.

(F) The amount of available revenue received by the district in the previous fiscal year other than incremental tax revenue.

(G) The sum of the amounts paid on all debts from sources other than incremental tax revenue, to the extent that the amounts are not included as available revenues under subparagraph (F).

(H) The sum of the amounts specified in subparagraphs (D) to (G), inclusive.

(I) The sum of the amounts specified in clauses (iii) and (iv) of subparagraph (C) of paragraph (4).

(J) The amount determined by subtracting the amount determined under subparagraph (I) from the amount determined under subparagraph (H). The amount determined under this paragraph shall be the available revenues as of the end of the previous fiscal year to be reported in the statement of indebtedness.

(5) For the purposes of this paragraph, available revenues shall include all cash or cash equivalents held by the district that were

received by the district under subparagraph (D) of paragraph (3) of subdivision (g) and all cash or cash equivalents held by the district that are irrevocably pledged or restricted to payment of a debt that the district has listed on a statement of indebtedness. In no event shall available revenues include funds allocated to the waterfront set-aside.

(6) For the purposes of this subdivision: (A) the amount a district is required to deposit into the waterfront set-aside shall constitute an indebtedness of the district, (B) no debt that a district intends to pay from the waterfront set-aside shall be listed on a statement of indebtedness or reconciliation statement as a debt of the district, and (C) any statutorily authorized deficit in or borrowing from funds in the waterfront set-aside shall constitute an indebtedness of the district.

(7) The county tax collector shall allocate and pay, at the same time or times as the payment of taxes into the funds of the respective taxing agencies of the county, the portion of incremental tax revenues allocated to each district under the infrastructure financing plan. The amount allocated and paid shall not exceed the amount of the district's remaining debt obligations, as determined under subparagraph (C) of paragraph (2), minus the amount of available revenues as of the end of the previous fiscal year, as determined under subparagraph (D) of paragraph (2).

(8) The statement of indebtedness constitutes prima facie evidence of the debts of the district.

(A) If the county tax collector disputes the amount of the district's debts as shown on the statement of indebtedness, the county tax collector, within 30 days after receipt of the statement, shall give written notice to the district thereof.

(B) The district, within 30 days after receipt of notice under subparagraph (A), shall submit any further information it deems appropriate to substantiate the amount of any debt that has been disputed. If the county tax collector still disputes the amount of debt, final written notice of that dispute shall be given to the district, and the amount disputed may be withheld from allocation and payment to the district as otherwise required by paragraph (7). In that event, the county tax collector shall bring an action in the superior court for declaratory relief to determine the matter no later than 90 days after the date of the final notice.

(C) In any court action brought under this paragraph, the issue shall involve only the amount of debt, and not the validity of any contract or debt instrument or any expenditures pursuant thereto. Payments to a trustee under a bond resolution or indenture of any kind or payments to a public agency in connection with payments by that public agency under a lease or bond issue shall not be disputed in any action under this paragraph. The matter shall be set for trial at the earliest possible date and shall take precedence over all other cases except older matters of the same character. Unless an action is brought within the time provided for herein, the county tax collector shall allocate and pay the amount shown on the statement of indebtedness as provided in paragraph (7).

(D) Nothing in this subdivision shall be construed to permit a challenge to or attack on matters precluded from challenge or attack by reason of Sections 53395.6 and 53395.7. However, nothing in this subdivision shall be construed to deny a remedy against the district otherwise provided by law.

(E) The Controller shall prescribe uniform forms consistent with this subdivision for a district's statement of indebtedness and reconciliation statement. In preparing these forms, the Controller shall obtain the input of the San Francisco City Controller, the San Francisco Tax Collector, and the district.

(F) For the purposes of this subdivision, a fiscal year shall be a year that begins on July 1 and ends the following June 30.

(j) (1) Prior to the adoption by the board of an infrastructure financing plan providing for tax increment financing under subparagraph (D) of paragraph (3) of subdivision (g), any affected taxing entity may elect to be allocated, and every local educational agency shall be allocated, all or any portion of the tax revenues allocated to the district under subparagraph (D) of paragraph (3) of subdivision (g) attributable to increases in the rate of tax imposed for the benefit of the taxing entity which levy occurs after the tax year in which the ordinance adopting the infrastructure financing plan becomes effective.

(2) The governing body of any affected taxing entity electing to receive allocation of taxes under this subdivision shall adopt a resolution to that effect and transmit the same, prior to the adoption of the infrastructure financing plan, to (A) the board, (B) the district, and (C) the county tax collector. Upon receipt by the county tax collector of the resolution, allocation of taxes under

this section to the affected taxing entity shall be made at the time or times allocations are made under subdivision (a) of Section 33670 of the Health and Safety Code.

(3) An affected taxing entity, at any time after the adoption of the resolution, may elect not to receive all or any portion of the additional allocation of taxes under this section by rescinding the resolution or by amending the same, as the case may be, and giving notice thereof to the board, the district, and the county tax collector. After receipt of a notice by the county tax collector that an affected taxing entity has elected not to receive all or a portion of the additional allocation of taxes by rescission or amendment of the resolution, any allocation of taxes to the affected taxing entity required to be made under this section shall not thereafter be made, but shall be allocated to the district. After receipt of a notice by the county tax collector that an affected taxing entity has elected to receive additional tax revenues attributable to only a portion of the increases in the rate of tax, only that portion of the tax revenues shall thereafter be allocated to the affected taxing entity, and the remaining portion thereof shall be allocated to the district.

(k) This section implements and fulfills the intent of Article 2 (commencing with Section 53395.10) and of Article XIII B and is consistent with the conclusion of California courts that tax increment revenues are not “proceeds of taxes” for purposes of the latter. The allocation and payment to a district of the portion of taxes specified in this section for the purpose of paying principal of, or interest on, loans, advances, or indebtedness incurred for facilities or the cost of acquisition and construction of facilities under this section shall not be deemed the receipt by a district of proceeds of taxes levied by or on behalf of the district within the meaning or for the purposes of Article XIII B of the California Constitution, nor shall this portion of taxes be deemed receipt of proceeds of taxes by, or an appropriation subject to limitation of, any other public body within the meaning or for purposes of Article XIII B of the California Constitution or any statutory provision enacted in implementation of Article XIII B. The allocation and payment to a district of this portion of taxes shall not be deemed the appropriation by a district of proceeds of taxes levied by or on behalf of a district within the meaning or for purposes of Article XIII B of the California Constitution.

SEC. 2. Section 53395.81 of the Government Code is amended to read:

53395.81. (a) This section shall apply only to a special waterfront district.

(b) A special waterfront district may be created as a waterfront district pursuant to, and shall be subject to, all applicable requirements of Sections 53395.3 and 53395.8, except as provided in this section.

(c) (1) The special waterfront district ERAF share produced in a Port America's Cup district with a special waterfront district enhanced financing plan shall be used only to finance the following:

(A) Construction of the port's maritime facilities at Pier 27.

(B) Planning and design work that is directly related to the port's maritime facilities at Pier 27.

(C) Planning, design, and acquisition and construction of improvements to publicly owned waterfront lands held by trustee agencies, such as the National Park Service, the California State Parks, and departments of San Francisco, and used as public spectator viewing sites for America's Cup-related events, including portions of the San Francisco Bay Trail under the jurisdiction of those trustee agencies. Any improvements authorized under this subparagraph shall not be required to be in the district.

(D) Future installations of shoreside power facilities on port maritime facilities.

(2) A special waterfront district enhanced financing plan for a Port America's Cup district shall provide that the proceeds of special waterfront district ERAF-secured debt are restricted for use to finance directly, reimburse the port for its costs related to, or refinance other debt incurred in, the construction of the port's maritime facilities at Pier 27, including public access and public open-space improvements, and for any other purposes for which the ERAF share can be used, subject to the set-aside requirements of paragraph (3).

(3) Twenty percent in the aggregate of the special waterfront district ERAF share allocated to a Port America's Cup district under this section shall be set aside to finance costs of planning, design, acquisition, and construction of improvements to waterfront lands owned by federal, state, or local trustee agencies, such as the National Park Service or the California State Parks as provided

in subparagraph (C) of paragraph (1). Any improvements authorized under this paragraph are not required to be located in the district.

(4) The 20 percent set-aside requirements applicable to a special waterfront district set forth in paragraph (3) are in lieu of the set-aside requirement set forth in clause (ii) of subparagraph (C) of paragraph (3) of subdivision (g) of Section 53395.8.

(5) All improvements authorized by this section in a Port America's Cup district shall be deemed to be public facilities of communitywide significance, which provide significant benefits to an area larger than the area of the district.

(d) If any portion of the 20-percent set-aside funds described in paragraph (3) of subdivision (c) is allocated to a federal or state trustee agency, both of the following shall apply:

(1) The special waterfront district enhanced financing plan for the Port America's Cup district shall specify the portion of the 20-percent set-aside funds described in paragraph (3) of subdivision (c) that is allocated to any federal or state trustee agency. However, the trustee agency's proposed use of the 20-percent set-aside funds does not need to be described in the special waterfront district enhanced financing plan pursuant to subparagraph (B) of paragraph (3) of subdivision (g) of Section 53395.8.

(2) San Francisco shall direct the county tax collector to pay the 20-percent set-aside funds allocated to the federal or state trustee agency directly to such trustee agency.

(e) (1) Before adopting the resolution authorizing the first debt issuance by a Port America's Cup district with a special waterfront district enhanced financing plan authorized by this section, the board of supervisors shall submit a fiscal analysis to the California Infrastructure and Economic Development Bank for review and approval.

(2) The bank may circulate the fiscal analysis to other state agencies, including, but not limited to, the Department of Finance, the Department of Housing and Community Development, and the Office of Planning and Research, and solicit their comments and recommendations. After considering the comments and recommendations of other state agencies, if any, the bank shall take one of the following actions:

(A) Approve the fiscal analysis if the bank makes the finding required pursuant to paragraph (4).

(B) Return the fiscal analysis to the board of supervisors with specific recommendations for changes that would allow the bank to approve the fiscal analysis.

(3) The bank shall have 90 days from the receipt of the fiscal analysis to act pursuant to this subdivision. If the bank does not act within 90 days, the fiscal analysis shall be deemed approved.

(4) For bank approval, the fiscal analysis shall demonstrate to the bank's reasonable satisfaction a reasonable probability that the economic activity proposed to occur as a result of hosting the America's Cup event in California would result in an amount of revenue to the General Fund with a net present value that is greater than the net present value of the amount of property tax increment revenues that would be diverted from ERAF over the term of the Port America's Cup district, taking into consideration all pertinent data. In reviewing the board's fiscal analysis, the bank shall consider only those General Fund revenues that would occur because of economic activity proposed to occur as a result of hosting the America's Cup event in California. The bank shall not consider those General Fund revenues that would have occurred if the America's Cup event were not held in California.

(5) The legislative body shall reimburse the bank for the reasonable cost of the review and approval of the fiscal analysis.

(f) The county tax collector shall allocate and pay to a special waterfront district the portion of taxes required to be allocated pursuant to an approved special waterfront district enhanced financing plan. If the plan allocates 100 percent of the incremental tax revenue of San Francisco that is available under applicable law to be allocated to the special waterfront district, then the special waterfront district shall not make a payment to ERAF, but if the plan allocates less than 100 percent of the incremental tax revenue of San Francisco that is available under applicable law to be allocated to a special waterfront district then the special waterfront district shall pay a proportionate share of incremental tax revenue into ERAF. The special waterfront district shall file a statement of indebtedness and a reconciliation statement annually in the same manner as described in subdivision (i) of Section 53395.8. It is the intent of this subdivision that any special waterfront district shall be deemed to be a district formed pursuant to subparagraph (D) of paragraph (3) of subdivision (g) of Section 53395.8 for purposes

of allocation and payment of taxes by the county tax collector as set forth in subdivision (i) of Section 53395.8.

(g) This section implements and fulfills the intent of Article 2 (commencing with Section 53395.10) and of Article XIII B and is consistent with the conclusion of California courts that tax increment revenues are not “proceeds of taxes” for purposes of the latter. The allocation and payment to a special waterfront district of the special waterfront district ERAF share for the purpose of paying principal of, or interest on, loans, advances, or indebtedness incurred for facilities or the cost of acquisition and construction of facilities under this section shall not be deemed the receipt by the special waterfront district of proceeds of taxes levied by or on behalf of the special waterfront district within the meaning or for the purposes of Article XIII B of the California Constitution, nor shall this portion of taxes be deemed the receipt of proceeds of taxes by, or an appropriation subject to limitation of, any other public body within the meaning or for purposes of Article XIII B of the California Constitution or any statutory provision enacted in implementation of Article XIII B. The allocation and payment to a special waterfront district of this portion of taxes shall not be deemed the appropriation by a special waterfront district of proceeds of taxes levied by or on behalf of a district within the meaning or for purposes of Article XIII B of the California Constitution.

(h) For purposes of this section, the meanings set forth in subdivision (c) of Section 53395.8 shall apply as appropriate, and the following terms have the following meanings, except as otherwise provided:

(1) “Port America’s Cup district” means a special waterfront district in the City and County of San Francisco that includes one or more of Seawall Lot 330, Pier 19, Pier 23, and Pier 29.

(2) “Special waterfront district” means a waterfront district in San Francisco that may comprise some or all of the America’s Cup venues or potential venues.

(3) “Special waterfront district enhanced financing plan” means an infrastructure financing plan for a special waterfront district that contains a provision substantially similar to that authorized for a Pier 70 district under subparagraph (D) of paragraph (3) of subdivision (g) of Section 55395.8, with only those changes deemed necessary by the legislative body of the special waterfront



district to implement the financing of the improvements described in paragraph (1) of subdivision (c).

(4) “Special waterfront district ERAF-secured debt” means debt incurred in accordance with a special waterfront district enhanced financing plan that is secured by and will be repaid from the special waterfront district ERAF share. For a Port America’s Cup district, special waterfront district ERAF-secured debt includes the portion of any debt that is payable from the special waterfront district ERAF share as long as the same percentage of debt proceeds will be used for the purposes authorized by paragraph (2) of subdivision (c).

(5) (A) “Special waterfront ERAF share” means the county ERAF portion of incremental tax revenue committed, as applicable, to a special waterfront district under a special waterfront district enhanced financing plan.

(B) Notwithstanding any other provision of this chapter, the maximum amount of the county ERAF portion of incremental tax revenues committed to a special waterfront district under this section shall not exceed one million dollars (\$1,000,000) in any fiscal year.

SEC. 3. Section 53397.71 of the Government Code is amended to read:

53397.71. Notwithstanding the provisions of this article, all of the following shall apply to the issuance of bonds by a waterfront district established pursuant to Section 53395.8:

(a) The legislative body may, by resolution, authorize the issuance of bonds without holding an election of the voters residing in the waterfront district.

(b) The legislative body may undertake the proceedings and actions described in this article with respect to the district as a whole, or separately with respect to one or more project areas. If the legislative body undertakes the proceedings for the district as a whole, it may thereafter, by resolution, allocate the principal amount of the authorized bond issuance to one or more project areas within the district.

(c) The legislative body may increase the principal amount of bonds that may be issued for a district or a project area within a district by undertaking the proceedings in this article, with respect to that increased amount.

(d) The bonds of a waterfront district may be sold at a negotiated sale subject to the notice requirements of Section 53397.10.

SEC. 4. (a) The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances of the City and County of San Francisco. The facts constituting the special circumstances are:

Areas of San Francisco, including the portions of the San Francisco waterfront, are characterized by deteriorating conditions that cannot be remedied by private investment alone, and require the use of public financing mechanisms to finance the rectification of the deteriorating conditions. In order to adapt the provisions of law governing infrastructure financing districts to these unique circumstances, this special act is necessary.

(b) The Legislature finds and declares that this special law is primarily intended to clarify ambiguities in existing law and, therefore, the Legislature ratifies any actions taken by San Francisco consistent with this special law taken prior to its effective date.











Approved \_\_\_\_\_, 2012

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*Governor*